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BY HAND DELIVERY

March 3, 2005

The Honorable Sue L. Robinson
United States District Court
844 N. King Street
Wilmington, DE 19801

Re: Teleglobe Communications Corporation, *et al.* v. BCE Inc., *et al.*
C.A. No. 04-CV-1266

Dear Chief Judge Robinson:

At the conclusion of the hearing held on February 16, 2005, the Court mentioned recent decisions of the Court of Appeals for the Third Circuit addressing the proposition that "a contract says what it says, and you are bound by the four corners of the contract." (Tr. at 66:22-23.) The Court suggested that the parties review those recent decisions and advise of their import in this case. (Tr. at 67:2-4.)

The recent decisions of the Third Circuit addressing principles of contract interpretation focus on the words the parties used, not inferences by implication. In J.C. Penney Life Ins. Co. v. Pilosi, the Third Circuit applied Pennsylvania law and held that, where "'the language of an insurance contract is clear and unambiguous, a court is required to enforce that language.' That is, 'a court must refrain from torturing the language of a policy to create ambiguities where none exists.'" 393 F.3d 356, 363 (3d Cir. 2004) (citations omitted). Again, "[w]hen a word or phrase is specifically defined within the policy, that definition controls in

determining the applicability of the policy." Id. at 364 (citation omitted). The Court reversed and denied coverage.

In In re Tops Appliance City, Inc., the Third Circuit affirmed a grant of summary judgment by a bankruptcy court on a matter of contract interpretation. 372 F.3d 510 (3d Cir. 2004). The Third Circuit quoted a decision of the United States Supreme Court for the proposition that "while the plain-meaning rule is not absolute, 'the words used, even in their literal sense, are the primary, and ordinarily most reliable, source of interpreting the measure of any writing: be it a statute, a contract, or anything else.'" Id. at 514 (citing Watt v. Alaska, 451 U.S. 259, 266 n.9 (1981)) (citation omitted).

In a recent unreported decision of the Third Circuit, Commerce Nat'l Ins. Servs., Inc. v. Buchler, the Court of Appeals held that "[i]f the language of the agreement is unambiguous, it must be given its plain meaning. If it is ambiguous, it must be construed against the drafter in accordance with the 'well-accepted *contra proferentem* principle of construction.'" No. 04-1028, 2004 WL 2786315, at *1 (3d Cir. Dec. 6, 2004) (citation omitted) (unpublished opinion). In Buchler, the Third Circuit held that a nonsolicitation provision in a contract was ambiguous, but affirmed this Court's grant of summary judgment nonetheless, on the ground that the construction of the contract by the district court was "reasonable" and satisfied the *contra proferentem* principle. Id. at *2.

We are mindful that we are proceeding on the basis of a motion to dismiss under Rule 12(b)(6) and not summary judgment. Nonetheless, as we hope we demonstrated at the hearing, the actual words of BCE and Teleglobe are properly before the Court since they are embodied in many documents that either have been referenced in the complaint or are integral to the complaint. And, once the Court focuses on the words that BCE and Teleglobe actually used, we respectfully believe that the conclusions are compelled that an implied "additional $2.5 billion commitment" simply did not exist and that no reasonable creditor or investor could have relied on the existence of such a commitment in the face of a constant stream of disclaimers to the contrary.

Respectfully,

Pauline K. Morgan

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